

A BILL

To establish a performance based seafood inspection organization within the Food and Drug Administration in the Department of Health and Human Services, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Voluntary Seafood Inspection Performance Based Organization Act of 1999”.

SEC. 2. FINDINGS.

The Congress finds that:

(1) The requirements of safety and wholesomeness established by the Food and Drug Administration pursuant to the Federal Food, Drug, and Cosmetic Act are the minimum legally acceptable level of quality for seafood in commerce of the United States.

(2) The United States seafood industry and consumers benefit from the seafood inspection and certification program of the National Oceanic and Atmospheric Administration of the Department of Commerce pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), commonly known as the "voluntary seafood inspection program", under which seafood processors and others in the seafood industry may obtain inspection, certification, and other services upon request, and for a fee.

(3) The official marks of approval under the voluntary seafood inspection program also benefit the public by providing reliable and visible confirmation by the Federal Government that seafood bearing such marks has been processed under conditions designed to ensure safety, wholesomeness, proper labeling, and quality.

(4) Increased participation in the program by the seafood industry and increased consumer understanding of the information conveyed by the official marks used in the program will increase the benefits of the program to the public.

(5) Recent requirements imposed by the Food and Drug Administration (FDA) of the Department of Health and Human Services and foreign governmental agencies are likely to increase demand for inspection, certification, and other services under the Agricultural Marketing Act of 1946.

(6) Establishing the voluntary seafood inspection program as a performance based organization (PBO) will provide greater administrative flexibility, enabling the program to administer its services more efficiently and provide benefits to the seafood industry and the public in the most cost-effective manner possible.

(7) Transferring the voluntary seafood inspection program from the Department of Commerce to a PBO in the FDA will promote increased economy and consistency by establishing FDA as the sole U.S. government agency inspecting and regulating seafood.

SEC. 3. ESTABLISHMENT OF A PERFORMANCE BASED ORGANIZATION FOR VOLUNTARY SEAFOOD INSPECTIONS.

(a) ESTABLISHMENT OF PBO.—Chapter IV of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341 et seq.) is amended—

(1) by inserting below the chapter title the following subchapter designation:

"SUBCHAPTER A—GENERAL PROVISIONS"; and

(2) by adding at the end the following:

**"SUBCHAPTER B—SEAFOOD—VOLUNTARY
INSPECTIONS AND OTHER ACTIVITIES**

"SEC. 431. DEFINITIONS.

"For purposes of this subchapter—

"(1) COO.—The term 'COO' means the Chief Operating Officer of the Performance Based Organization (hereafter in this subchapter referred to as the 'PBO') appointed pursuant to section 435.

"(2) MANDATORY PROGRAM.—The terms 'mandatory seafood inspection program', 'mandatory inspection', and 'mandatory program' refer to inspections authorized under section 702 for purposes of enforcement of subchapter A or the Public Health Service Act.

"(3) VOLUNTARY PROGRAM.—The terms 'voluntary seafood inspection program', 'voluntary inspection', and 'voluntary program' refer to inspection and other fee-for-service activities authorized under section 203(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)).

"(4) SEAFOOD.—The term 'seafood' means any food for use by man or animal that is derived in whole or in part from aquatic (including fresh water) mollusks, crustaceans, amphibians, reptiles, fin fish, or other forms of aquatic plant or animal life (including jellyfish, sea cucumbers, and sea urchins), and the reproductive products and the roe of such animals. 'Seafood' may be derived from cultured or wild harvested organisms, but does not include food derived from aquatic birds or marine mammals.

**"SEC. 432. ESTABLISHMENT OF PERFORMANCE BASED ORGANIZATION;
FUNCTIONS.**

"(a) PERFORMANCE BASED ORGANIZATION.—There is established in the Food and Drug Administration (hereafter in this subchapter referred to as 'FDA'), under the direction of the Commissioner, a PBO for seafood inspection , which—

"(1) shall be the successor to the Seafood Inspection Program of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration of the Department of Commerce; and

"(2) is authorized to carry out the activities specified in this section, in accordance with the provisions of section 433 and other provisions of this Act, and with other laws administered by the Commissioner.

"(b) VOLUNTARY INSPECTION, CERTIFICATION, AND GRADING OF SEAFOOD.—The PBO shall carry out the inspection, certification, identification, grading, and

other services with respect to seafood specified in section 203(h) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h)), for persons requesting such services, on a fee-for-service basis.

"(c) INSPECTIONS UNDER SECTIONS 702 AND 706.—The COO is authorized (but shall not be required) to enter into an arrangement with the Commissioner under which qualified staff of the PBO perform some or all of the mandatory inspections of seafood establishments under section 702, the seafood inspections under section 706, or both; or the seafood inspections authorized by regulations issued under section 361 of the Public Health Service Act. The amount or rate of reimbursement by the Commissioner for inspections under section 702 or section 361 of the Public Health Service Act shall be determined by negotiation between the COO and the Commissioner, but shall not be less than the amount sufficient to reimburse additional costs incurred by the PBO as a result of performing such inspections.

"(d) OTHER ACTIVITIES RELATING TO SEAFOOD.—

"(1) IN GENERAL.—The PBO is authorized to carry out any or all of the following activities, subject to the conditions specified in paragraph (2):

"(A) activities relating to seafood under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) other than those specified in subsection (b);

"(B) activities to carry out responsibilities under this Act or the Public Health Service Act delegated to the COO by the Commissioner with the concurrence of the COO; and

"(C) other activities for the benefit of the seafood or fishing industry or of consumers of seafood, including provision of information, advice, and assistance to government agencies and industry members on seafood quality, safety, labeling, or similar matters, such as international agreements affecting the seafood industry.

"(2) FUNDING. SOURCES—The full cost of each such activity shall be paid:

“(A)(i) by fees recovered from persons benefitting from the activity;

"(ii) from amounts specifically appropriated in fiscal year 2000 for use by the PBO, or

"(iii) (in the case of activities described in paragraph (1)(B)) from amounts appropriated for use by the Secretary, upon terms agreed between the Commissioner and the COO; or

“(B) by a combination of two or more of the sources specified in subparagraph (A).

"SEC. 433. GENERAL POWERS AND REQUIREMENTS.

"(a) POLICY DIRECTION.—

"(1) IN GENERAL.—All seafood inspections and other activities of the PBO shall be conducted at the direction of the COO, subject to the oversight and direction of the Commissioner.

"(2) OPERATIONS.—Except as provided in this Act, neither the PBO nor the COO shall be required to seek or obtain authorization from the Secretary to perform any function which the PBO or COO is authorized to perform by this Act.

"(3) COORDINATION OF FUNCTIONS.—To the maximum extent feasible—

“(A) the PBO shall ensure consistency and maximize coordination with, and avoid duplication of, standards and functions of other FDA components; and

“(B) seafood inspections by the PBO under section 203(h) of the Agricultural Marketing Act of 1946 shall be performed in a manner designed to minimize or eliminate the need for additional inspections under this Act.

"(4) TRAINING.—It shall be the responsibility of the COO to ensure that PBO employees receive training meeting standards satisfactory to the Commissioner and adequate to ensure compliance with the requirements of this subsection.

"(b) REGULATIONS.—The Secretary is authorized to promulgate regulations under this Act and the Agricultural Marketing Act of 1946 as necessary for performance of the functions of the PBO.

"(c) OFFICIAL SYMBOLS; TRADEMARKS.—

"(1) MARK OF APPROVAL.—

"(A) IN GENERAL.—The PBO, with the approval of the Commissioner, may adopt and use official marks or other symbols, to be affixed to or associated with seafood packaging, containers, or labels as certification of compliance with applicable quality, safety, or other requirements.

"(B) LIMITATION.—An official mark adopted pursuant to subparagraph (A) shall not be affixed to any seafood packaging or container in a foreign country or on any foreign flag vessel.

“(2) TRADEMARKS, SERVICE MARKS.—The PBO may register trademarks and service marks.

"(d) CONTRACTS, COOPERATIVE AGREEMENTS, AND SPECIAL STUDIES.—

“(1) IN GENERAL.—

“(A) CONTRACTS AND COOPERATIVE AGREEMENTS.—To the extent necessary to carry out its functions under this subchapter, the PBO may enter into contracts or cooperative agreements (including for the purchase, sale, or rental of real or personal property) with Federal, State, and local government agencies; with international organizations and foreign agencies; with academic institutions; and with private entities and persons.

“(B) SPECIAL STUDIES.—The COO is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the PBO; to prepare from its records special reports; and to furnish copies of its studies or other records upon the payment of the actual or estimated cost of such work.

“(2) LEGAL SERVICES.—All legal services required by the PBO shall be provided by or through the Office of General Counsel of the Department of Health and Human Services.

"(e) ARRANGEMENTS WITH FDA.—

"(1) PERFORMANCE OF FDA FUNCTIONS BY PBO.—The PBO may decline to furnish services to the FDA, or to carry out FDA functions, without payment of such fee or reimbursement as the PBO may require.

"(2) SERVICES TO PBO BY FDA COMPONENTS.—The Commissioner may (but need not) require reimbursement from the PBO for training, legal, or other services furnished by other FDA components to the PBO.

"(f) FEES.—The PBO is authorized to establish and modify fee schedules for activities of the PBO. In setting such fees the PBO may take into consideration the full costs of such activities, including direct and overhead costs (including such items as training of inspectors and auditors, independent audits, and depreciation of capital equipment).

"(g) DISCRETION TO REFUSE SERVICES.—

"(1) IN GENERAL.—The PBO may refuse to provide inspection or other services to any person that the PBO has reason to believe has committed an act in violation of this or another law relating to seafood inspection, including—

"(A) affixing without authorization to seafood, seafood packaging, or any container of seafood, or to any invoice, advertisement, or other document relating to seafood, an official mark of approval adopted pursuant to subsection (c) or an imitation or counterfeit thereof; or

"(B) using, without approval of the PBO, words in commerce indicating in any way that the product has been approved, inspected, or otherwise appraised by the PBO or the Food and Drug Administration.

"(2) REINSTATEMENT OF SERVICES.—A person seeking reinstatement of services refused pursuant to paragraph (1) shall be required to prove by a preponderance of the evidence that the violative act did not occur, or that the violation has been rectified and is not likely to recur.

"(h) PUBLIC INFORMATION AND COMMENTS.—The PBO—

"(1) may inform the public about its programs and services;

"(2) may conduct surveys to inform itself of the views of persons in the private sector regarding its programs and services (but may not require any person to participate in such surveys); and

"(3) may request (but not require) the views of its customers regarding the nature and quality of the programs and services it provides.

"(i) ROUTINE OPERATIONS; INTERNAL PROCEDURES.—The PBO is authorized to establish, implement, modify, and repeal internal rules and procedures to govern the manner in which the business of the PBO shall be conducted and the powers granted to it shall be exercised, consistent with the requirements of this Act and other applicable law, without requiring the approval of the Commissioner.

"SEC. 434. PERFORMANCE AGREEMENT; ANNUAL REPORT.

"(a) PERFORMANCE AGREEMENT.—

"(1) IN GENERAL.—The Secretary and the COO shall enter into a performance agreement (which shall be subject to review and renegotiation at least annually, and may be revised more frequently to reflect significant changes), stating which of the functions specified in subsections (c) and (d) of section 432 are to be performed by the PBO, and setting measurable organizational and individual performance goals for the COO and for the PBO in key operational areas.

"(b) ANNUAL REPORT.—The COO shall prepare and submit to the Secretary and the Congress an annual management report containing such information as the Director of the Office of Management and Budget shall prescribe.

"SEC. 435. MANAGEMENT AND CHIEF OPERATING OFFICER (COO).

"(a) APPOINTMENT.—The management of the Voluntary Seafood Inspection Performance Based Organization is vested in a COO who shall be appointed by the Secretary of Health and Human Services to a 5-year term and compensated without regard to chapters 33, 51, and 53 of title 5, United States Code. The appointment shall be made on the basis of demonstrated ability in management. The Secretary may reappoint the COO to subsequent

terms so long as performance, as set forth in the annual performance agreement entered into pursuant to section 434, is satisfactory.

"(b) COMPENSATION.—

"(1) BASIC PAY.—The COO is authorized to be paid at an annual rate of basic pay not to exceed the maximum rate of basic pay for the Senior Executive Service under section 5382 of title 5, United States Code, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2) of such title 5.

"(2) BONUS.—The COO may receive a bonus for a calendar year in an amount up to, but not in excess of, 50 percent of such annual rate of basic pay, based upon the Secretary's evaluation of the COO's performance in relation to the performance goals set forth in the performance agreement described in section 434. Payment of a bonus under this subsection may be made to the COO only to the extent that such payment does not cause the COO's total aggregate compensation in a calendar year to equal or exceed the amount of the President's salary under section 102 of title 3, United States Code.

"(c) TERMINATION OF APPOINTMENT.—The COO shall be removable—

“(1) by the President; or

“(2) by the Secretary, for misconduct or non-satisfactory performance under the performance agreement entered into pursuant to section 434.

"(d) FINALITY OF TERMINATION OR NON-RENEWAL OF APPOINTMENT.—

A decision of the President or the Secretary not to renew, or to terminate, the appointment of the COO shall be a final administrative action not subject to review.

"SEC. 436. PERSONNEL PROVISIONS.

"(a) The PBO shall not be subject to any ceiling relating to the number or grade of its employees or expenditures for salaries and expenses.

“(b)(1) Any flexibilities provided by subsections (f) through (q) shall be exercised in a manner consistent with the following provisions of title 5, United States Code:

“(A) chapter 23, relating to merit system principles and prohibited personnel practices;

“(B) provisions relating to preference eligibles;

“(C) section 5307, relating to the aggregate limitation on pay; and

“(D) chapter 71, relating to labor-management relations, except to the extent provided by subsection (c).

"(2) The exercise of any authorities provided by subsection (f) through (q) shall be subject to subsection (b) and (c) of sections 1104 of title 5, United States Code, as though such authorities were delegated to the PBO under subsection (a)(2) of such section 1104. The PBO shall provide the Office of Personnel Management with any information the Office requires in carrying out its responsibilities under this paragraph.

"(c)(1) Except as provided in paragraph (2), employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code, shall not be subject to any flexibility provided by subsections (f) through (q) unless the labor organization and the PBO have entered into a written agreement which specifically provides for the exercise of that flexibility.

"(2) Notwithstanding paragraph (1)—

“(A) if the exercise of any flexibility provided in subsection (f) through (q) would affect employees who are in more than one bargaining unit affiliated with the same national labor organization and who are covered by more than one collective bargaining agreement, such flexibility may be exercised if there is a written agreement permitting such exercise between the PBO and the national labor organization; and

“(B) if the exercise of any flexibility provided in subsection (f) through (q) would affect employees who are in more than one bargaining unit and whose exclusive representatives are affiliated with more than one national labor organization, such flexibility may be exercised if there is a written agreement permitting such exercise between the PBO and all of such national labor organizations.

"(3) The written agreements referred to in paragraphs (1) and (2) may not be imposed by the Federal Services Impasses Panel under section 7119 of title 5, United States Code.

“(d)(1) The PBO may exercise any of the flexibilities provided by subsections (f), (g), (i), (j), and (n)-(q) without prior approval of the Office of Personnel Management.

“(2) the PBO may exercise the flexibilities described in subsection (k)-(m) only after a specific plan for implementation of those flexibilities is submitted to and approved by the Director of the Office of Personnel Management.

“(e)(1) The exercise of any flexibilities under subsections (f) through (q) does not affect the authority of the PBO to implement a demonstration project, subject to chapter 47 of title 5, United States Code, and as provided in paragraph (2).

“(2)(A) In applying section 4703 of such title 5 to a project in paragraph (1)—

“(i) subsection (b)(1) shall be deemed to read as follows:

“(1) develop a plan for such project which describes its purpose, the employees to be covered, the project itself, its anticipated outcomes, and the method of evaluating the project;”;

“(ii) subsection (b)(3) shall be disregarded;

“(iii) in subsection (b)(4) ‘180 days’ shall be deemed to be ‘30 days’;

“(iv) subsection (b)(6) shall be deemed to read as follows:

“(6) provide each House of Congress with the final version of the plan;”;

“(v) subsection (c)(1) shall be deemed to read as follows: ‘(1) subchapter V of chapter 63 or subpart G of part III of this title;’;

“(vi) subsection (d) shall be disregarded; and

“(vii) subsection (f) shall be disregarded and, in lieu thereof, subsection (b) of this section shall apply as though the demonstration project were a flexibility authorized by subsections (f) through (q) of this Act.”.

“(f) The PBO may establish a performance management system which—

“(1) maintains individual accountability by—

“(A) establishing one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance, and communicating such retention standards to employees;

“(B) making periodic determinations of whether each employee meets or does not meet the employee’s established retention standards; and

“(C) with respect to any employee whose performance does not meet established retention standards—

“(i) in accordance with applicable provisions of law and regulation, denying any increases in basic pay, promotion, and credit for performance under section 3502 of title 5, United States Code; and

“(ii) taking one or more of the following actions:

“(I) reassignment;

“(II) an action under chapter 43 or chapter 75 of title 5, United States Code; or

“(III) any other appropriate action to resolve the performance problem;

and

“(2) strengthens its effectiveness by providing for—

“(A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the annual performance agreement described in section 434(a) and the PBO performance planning procedures, including those established under the Government Performance and Results Act of 1993, and communicating such goals or objectives to employees;

“(B) using such goals and objectives to make performance distinctions among employees or group of employees; and

“(C) using performance assessments as a basis for granting employee awards, adjusting an employee’s rate of basic pay, and other appropriate

personnel actions, in accordance with applicable provisions of law and regulation.

For purposes of this subparagraph, ‘performance assessment’ means a determination of whether or not retention standards established under paragraph (1)(A) are met, and any additional performance determination made on the basis of performance goals and objectives established under paragraph (2)(A).

“(3) For purposes of title 5, United States Code, ‘unacceptable performance’ with respect to an employee of the PBO means performance of the employee that fails to meet a retention standard established under paragraph (1)(A).

“(g)(1) the PBO may establish an awards program designed to provide incentives for recognition of organizational, group, and individual achievements by providing for granting awards to employees who, as individuals or members of a group, contribute to meeting the performance goals and objectives established under this section by such means as a superior individual or group accomplishment, a documented productivity gain, or sustained superior performance.

“(2) Notwithstanding section 4502(b) of title 5, United States Code, the PBO may grant a cash award in an amount not exceeding \$25,000, with the approval of the COO.

“(h)(1) In applying sections 4303(b)(1)(A) and 7513(b)(1) of title 5, United States Code, to employees of the PBO, ‘30 days’ may be deemed to be ‘15 days’.

“(2) Notwithstanding the second sentence of section 5335(c) of title 5, United States Code, an employee of the PBO shall not have the right to appeal the denial of a periodic step increase under such section 5335 to the Merit Protection Board.

“(i)(1) the PBO may, subject to criteria to be prescribed by the Office of Personnel Management, establish one or more broad banded systems covering all or any portion of its workforce. For purposes of this subsection, “broad-banded system” means a system for grouping positions for pay, job evaluation, and other purposes that is different from the system established under chapter 51 and subchapter III of chapter 53 of title 5, United States Code, as a result of combining grades and related ranges of rates of pay in one or more occupational series.

The Office may require the PBO to submit to the Office such information relating to its broad-banded systems as the Office may require. Except to the extent provided under subsections (d) and (e), laws and regulations pertaining to General Schedule employees (other than chapter 51 and subchapter III of chapter 53 of title 5, United States Code) shall continue to be applicable under a broad-banded system.

“(2) The criteria to be prescribed by the Office of Personnel Management shall, at a minimum—

“(A) ensure that the structure of any broad-banded system maintains, through linkage to the General Schedule, the principle of equal pay for substantially equal work;

“(B) establish the minimum and maximum number of grades that may be combined into pay bands;

“(C) establish requirements for adjusting the pay of an employee within a pay band;

“(D) establish requirements for setting pay of a supervisory employee whose position is in a pay band or who supervises employees whose positions are in pay bands; and

“(E) establish requirements and methodologies for setting the pay of an employee upon conversion to a broad-banded system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another pay band, or movement to a different geographic location), and movement between a broad-banded system and another pay system.

“(j) The PBO may determine that, with respect to its employees who remain subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, rather than being under a broad-banded system established under subsection (a), the General Schedule does not have 10 fixed rates of pay for each grade. On and after the date such a determination is made, an employee who is otherwise subject to subchapter III of chapter 53 of title 5, and who is promoted or transferred to a position in a higher grade, shall be entitled to basic pay at a rate

determined under the criteria prescribed by the Office of Personnel Management. In lieu of periodic step-increases under section 5335 of title 5, United States Code, such employees who meet retention standards established under section 436(f)(1)(A) shall be entitled to performance increases under criteria prescribed by the Office. A performance increase shall be equal to one-ninth of the difference between the minimum and maximum rates of pay for the applicable grade of the General Schedule. In lieu of additional step-increases under section 5336 of title 5, such employees shall be eligible for exceptional performance increases under criteria prescribed by the Office. An exceptional performance increase shall be equal to any amount up to, but not in excess of, a performance increase.

“(k)(1) With the approval of the Office of Personnel Management in accordance with subsection (d)(2), the PBO may establish one or more alternative job evaluation systems that include any positions or groups of positions that the PBO determines, for reasons of effective administration—

“(A) should not be classified under chapter 51 of title 5, United States Code, or paid under the General Schedule;

“(B) should not be classified or paid under subchapter IV of chapter 53 of such title 5; or

“(C) should not be paid under section 5376 of such title 5.

“(2)(A) An alternative job evaluation system established under this subsection that includes positions described in subparagraph (A) or (B), or both, of paragraph (1) may not provide a rate of basic pay for any employee in excess of the maximum rate of pay under the General Schedule.

“(B) An alternative job evaluation system established under this subsection that includes positions described in subparagraph (C) of paragraph (1) may not provide a rate of basic pay for any employee in excess of the annual rate of basic pay of the COO under section 435(b).

“(3) An alternative job evaluation system established under this subsection shall be implemented in such a way as to ensure the maintenance of the principle of equal pay for substantially equal work.

“(4) Except as otherwise provided under this subsection, employees under an alternative job evaluation system shall continue to be subject to the laws and regulations covering employees under the pay system that would otherwise apply to them. If the alternative job evaluation system combines employees from different pay systems into a single system, the plan submitted under subsection (d)(2) shall address the applicability of the laws and regulations for the different pay systems.

“(l) With approval of the Office of Personnel Management in accordance with subsection (d)(2), the PBO may, with respect to employees who are covered by a broad-banded system established under subsection (i) or an alternative job evaluation system established under subsection (k), provide for variations from the provisions of subchapter VI of chapter 53 of title 5, United States Code.

“(m) With the approval of the Office of Personnel Management in accordance with subsection (d)(2), the PBO may, with respect to its employees, provide for variations from the provisions of sections 5753 and 5754 of title 5, United States Code.

“(n)(1) Except as otherwise provided by this subsection, an employee of the PBO may be selected for a permanent appointment in the competitive service in the PBO through internal competitive promotion procedures when the following conditions are met:

“(A) the employee has completed, in the competitive service, 2 years of current continuous service under a term appointment or any combination of term appointments:

“(B) such term appointment or appointments were made under competitive procedures prescribed for permanent appointments;

“(C) the employee’s performance under such term appointment or appointments met established retention standards; and

“(D) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment.

“(2) An appointment under this subsection may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

“(o)(1) Notwithstanding subchapter 1 of chapter 33 of title 5, United States Code, the PBO may establish category rating systems for evaluating job applicants for positions in the competitive service, under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings. Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant’s knowledge, skills, and abilities relative to those needed for successful performance in the job to be filled.

“(2) Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS-9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

“(3) An appointing authority may select any applicant from the highest quality category or, if fewer than three candidates have been assigned to the highest quality category, from a merged category consisting of the higher and second highest quality categories. Notwithstanding the preceding sentence, the appointing authority may not pass over a preference eligible in the same or higher category from which selection is made, unless the requirements of section 3317(b) of title 5, United States Code, as applicable, are satisfied.

“(p) The COO may detail employees among the offices of the PBO without regard to the 120-day limitation in section 334(b) of title 5, United States Code.

“(q) Notwithstanding any other provision of law or regulation, the PBO may establish a probationary period under section 3321 of title 5, United States Code, of up to 3 years for positions where the PBO determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

“(r) Notwithstanding the preceding subsections, no provision of this section exempts the PBO from—

“(1) any employment priorities established under direction of the President for the placement of surplus or displaced employees; or

“(2) its obligations under any court order or decree relating to the employment practices of the PBO or the Department.

"SEC. 437. PROCUREMENT FLEXIBILITY.

"(a) DEFINITIONS.—For purposes of this section, terms and acronyms have the following meanings:

"(1) The term 'commercial item' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (OFPPA) (41 U.S.C. 403(12)).

"(2) The acronym 'FAR' means the Federal Acquisition Regulation published at 48 C.F.R. chapter 1 et seq.

"(3) The acronym 'FPASA' means the Federal Property and Administrative Services Act of 1949 (chapter 288, 63 Stat. 377 (codified, as amended, in scattered sections of titles 40 and 41 of the U.S. Code).

"(4) The acronym 'OFPPA' means the Office of Federal Procurement Policy Act of 1949 (41 U.S.C. 401 et seq.).

"(5) The acronym 'SBA' means the Small Business Act (15 U.S.C. 631 et seq.).

"(6) The term 'OFPPA and SBA notice' means the notice required by section 18 of the OFPPA (41 U.S.C. 416) and sections 8(e), (f), and (g) of the SBA (15 U.S.C. 637(e), (f), and (g)).

"(b) FLEXIBLE PROCUREMENT AUTHORITIES.—

"(1) IN GENERAL.—In addition to procurement procedures otherwise available under Federal law, the PBO may use any of the procedures specified in this subsection, consistent with guidance provided by the Administrator for Federal Procurement Policy pursuant to subsection (c).

"(2) TWO-PHASE SELECTION PROCEDURE.—The PBO may conduct a two-phase competition, which shall be considered to be a competitive procedure for purposes of this or any other Act, using the following procedures:

"(A) NOTICE OF COMPETITION.—Prior to the first phase of competition, a notice shall be published in accordance with the OFPPA and SBA notice requirements, except that, notwithstanding section 18(b) of the OFPPA and section 8(f) of the SBA, the notice need only include a general description of the scope or purpose of the procurement that is sufficient for sources to make an informed business decision whether to participate in the procurement, a description of the basis on which sources will be selected to submit offers in the second phase, and any additional information the contracting officer finds appropriate.

"(B) FIRST PHASE.—In the first phase of competition—

"(i) sources submit basic information and such additional information as may be requested by the contracting officer; and

"(ii) sources are selected to compete in the second phase, as the contracting officer determines to be appropriate and in the best interests of the government.

"(C) SECOND PHASE.—Only the sources selected in the first phase are eligible to participate in the second phase of competition in accordance with sections 303A and 303B of the FPASA (41 U.S.C. 253a and 253b), which may include a single procurement or repetitive procurements within the general scope of the purpose stated in the notice required under subparagraph (A).

"(3) SIMPLIFIED PROCEDURES FOR PROCUREMENT OF COMMERCIAL ITEMS.—Whenever the PBO anticipates that commercial items will be offered, the PBO may acquire commercial items by using the special simplified procedures authorized by section 303(g)(1)(B) of the FPASA (41 U.S.C. 253(g)(1)(B)) and consistent with section 31(g) of the OFPPA (41 U.S.C. 427(g)) without regard to any dollar limitations set forth in those sections and without regard to the expiration date of the test of such procedures set forth in section 4202 of the Clinger-Cohen Act of 1996.

"(4) FLEXIBLE WAIT PERIODS AND DEADLINES FOR SUBMISSION OF OFFERS.—Consistent with international agreements, whenever the PBO is acquiring property or services that do not meet the definition of commercial item, the PBO may—

“(A) reduce the minimum period of time specified in section 18(a)(3)(A) of the OFPPA and section 8(e)(3)(A) of the SBA that an agency must wait after Publication of notice before a solicitation is issued; and

“(B) establish flexible deadlines for the submission of bids or proposals notwithstanding any deadlines set forth in section 18(a)(3)(B) of the OFPPA or section 8(e)(3)(B) of the SBA. Deadlines shall afford potential offerors a reasonable opportunity to respond.

"(5) ACQUISITION OF SERVICES FROM SMALL BUSINESSES.—

"(A) IN GENERAL.—In procuring services that do not meet the definition of a commercial item, subject to subparagraph (B), the PBO may use the simplified procedures applicable to procurements below the simplified acquisition threshold as set forth in the FAR if—

"(i) the procurement is in an amount not greater than \$1,000,000;

"(ii) the procurement is conducted as a small business set-aside pursuant to section 15(a) of the SBA (15 U.S.C. 644(a)); and

"(iii) supply items are expected to constitute less than 20 percent of the total value of the contract.

"(B) LIMITATIONS.—The procedure described in subparagraph (A) may not be used—

"(i) for a sole source acquisition; or

"(ii) for procurement of construction.

“(c) IMPLEMENTATION.----The PBO, in consultation with the Administrator for Federal Procurement Policy, shall issue guidance to implement the authorities set forth in this section. As part of the consultation, the Administrator shall provide guidance to the PBO, which shall be designed to ensure, to the maximum extent practicable, consistent implementation of these authorities by other performance-based organizations with the same authorities.

“(d) LIMITATION ON MULTIAGENCY CONTRACTING.—No agency may purchase property and services under contracts entered into or administered by the PBO using any authority provided in subsection (b) unless the purchase is approved in advance by the senior procurement official responsible for purchasing by the ordering agency.

"(e) GENERALLY APPLICABLE PROVISIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this section, the PBO shall comply with all applicable Federal laws and regulations concerning procurement of property and services.

"(2) CIVIL RIGHTS AND LABOR LAWS.—Nothing in this section shall be construed to waive civil rights or labor standards laws applicable to Federal contracts.

**"SEC. 438. VOLUNTARY SEAFOOD INSPECTION AND SERVICES ACCOUNT;
FINANCING OF THE PBO.**

"(a) IN GENERAL.—All funds made available to the PBO (including appropriations and revenues and receipts from fees and other sources) shall be deposited into a Voluntary Seafood Inspection and Services account to be established on the books of the Treasury and shall remain available, without fiscal year limitation, for carrying out the functions and activities of the PBO under this subchapter, including the following amounts:

"(1) INSPECTION AND OTHER FEES.—Fees and other reimbursement collected for activities specified in section 432, including reimbursement by the Commissioner for inspections under section 702 or by regulations issued under section 361 of the Public Health Service Act and fees collected for inspections under section 706, in accordance with the agreement with the Commissioner under section 434.

"(2) TRANSFERRED BALANCES.—Unobligated and unexpended balances transferred by the Secretary of Commerce pursuant to section 5(c) of the Voluntary Seafood Inspection Performance Based Organization Act of 1999.

"(3) APPROPRIATIONS.—Amounts appropriated for the use of the PBO pursuant to section 6 of that Act or any other Act.

"(b) INVESTMENT AUTHORITY.—Funds deposited into the account specified in subsection (a) may be invested by the COO in insured or fully collateralized, interest-bearing accounts or, at the discretion of the COO, by the Secretary of the Treasury in United States Government debt instruments.

"(c) RESTRICTION ON FINANCING.—No funds appropriated and available to the Commissioner shall be available to the PBO for any purpose, including compensation of the COO or other personnel, other than—

"(1) amounts appropriated specifically for the use of the PBO; and

"(2) amounts necessary to reimburse the PBO for carrying out activities assigned by the Commissioner under sections 432(c) and 432(d)(1)(B).”.

SEC. 4. CONFORMING AMENDMENTS.

(a) SECTION 702 INSPECTIONS.—Section 702 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372) is amended by adding at the end the following new subsection:

"(f) INSPECTIONS BY PERSONNEL OF VOLUNTARY SEAFOOD INSPECTION PBO.—An officer or employee of the voluntary seafood inspection PBO established under subchapter B of title IV may be designated to perform an inspection under this section with

respect to seafood, pursuant to an agreement between the Commissioner and the Chief Operating Officer of the PBO under that subchapter.

(b) SECTION 706 INSPECTIONS.—Section 706 of that Act (21 U.S.C. 376(a)) is amended—

(1) by inserting "(a)" after "Sec. 706"; and

(2) by adding at the end the following new subsection:

"(b) INSPECTIONS BY PERSONNEL OF VOLUNTARY SEAFOOD INSPECTION PBO.—An officer or employee of the voluntary seafood inspection PBO established under subchapter B of title IV may be designated to perform an inspection under this section, pursuant to an agreement between the Commissioner and the Chief Operating Officer of the PBO under that subchapter."

SEC. 5. TRANSITION PROVISIONS.

(a) TRANSFER OF FUNCTIONS.—On the effective date of this Act, the following authorities or functions vested, on the date immediately preceding such date, in the Secretary of Commerce (or in the Department of Commerce or in officers or components thereof) are transferred to and vested in the Secretary of Health and Human Services and shall be carried out pursuant to subchapter B of chapter IV of the Federal Food, Drug, and Cosmetic Act:

(1) all authorities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) relating to seafood (as defined in section 431(4) of the Federal Food, Drug, and Cosmetic Act); and

(2) so much of other functions so vested as the Secretaries of Commerce and of Health and Human Services agree are incidental to or necessary for the performance of the functions specified in paragraph (1).

(b) TRANSFER OF PERSONNEL.—On the effective date of this Act, and without a break in service, all officers and employees of the Seafood Inspection Program of the National Oceanic and Atmospheric Administration, and such other employees of the Department of Commerce as may be designated by the Secretary of Commerce, with the concurrence of the

Secretary of Health and Human Services, shall become civilian officers and employees of the voluntary seafood inspection performance based organization established by this Act, except that any such officer or employee who immediately prior to transfer is not a member of the Senior Executive Service may not be directly transferred into the Senior Executive Service. The COO may fix by administrative action the salary of an officer or employee who upon transfer is to occupy a Senior Executive Service position as defined in section 3132 of title 5, United States Code, until such time as the officer or employee may be appointed to the Senior Executive Service under chapter 33 of title 5, United States Code.

(c) TRANSFER OF ASSETS AND LIABILITIES.—On the effective date of this Act, the Secretary of Commerce shall transfer to the voluntary seafood inspection performance based organization established by this Act all assets and liabilities of the Department of Commerce or its components pertaining to the functions specified in subsection (a), including facilities, contracts, property, records, accounts payable and receivable, and unexpended and unobligated balances of funds.

(d) CONTINUED EFFECT OF ADMINISTRATIVE ACTIONS.—All administrative actions pertaining to seafood executed by the Secretary of Commerce, the National Oceanic and Atmospheric Administration, or the National Marine Fisheries Service pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.) and in effect on the day before the effective date of this Act (including any rule, proposed rule, inspection, certification, contract, agreement, fee schedule, or other action) shall remain in effect unless and until modified or rescinded pursuant to subchapter B of chapter IV of the Federal Food, Drug, and Cosmetic Act.

SEC. 6. APPROPRIATIONS FOR TRANSITION EXPENSES AND CAPITALIZATION.

(a) APPROPRIATION FOR FY 2000.—There are authorized to be appropriated \$3,000,000 for fiscal year 2000, to be deposited into the Voluntary Seafood Inspection and Services Account identified in section 438 of the Federal Food, Drug, and Cosmetic Act and to

remain available until expended, without fiscal year limitation, to carry out the activities specified in subsection (b).

(b) **PURPOSES.**—Amounts appropriated in subsection (a) may be used, without fiscal year limitation, to pay costs of—

(1) activities necessary for the transfer of the Seafood Inspection Program required by section 5,

(2) the initial implementation of subchapter B of chapter IV of the Federal Food, Drug, and Cosmetic Act, and

(3) subsequent activities under such subchapter for which fee revenues and other reimbursements are insufficient,

including costs of training personnel and of providing necessary information and education to the seafood and fishery industries, other government agencies, and consumers, and for other inspection and examination purposes.

SEC. 7. REPORT.

Not later than five years after the effective date of this Act, the Secretary of Health and Human Services shall provide to the President and the Congress a report on the operation, effectiveness, and costs of the provisions of this Act, including any recommendations for legislation the Secretary deems necessary.

SEC. 8. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act shall take effect on the latter of October 1, 1999 or ninety days after enactment.

(b) **APPOINTMENT OF COO OF VOLUNTARY SEAFOOD INSPECTION PBO.**—The Secretary of Health and Human Services is authorized, at any time on or after the enactment of this Act, to appoint the Chief Operating Officer of the voluntary seafood inspection performance based organization under subchapter B of chapter IV of the Federal Food, Drug, and Cosmetic Act.